

CHAPTER 5
TRACK AND EXCURSION BOAT
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 20 and 25]

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; taxable attendance and the dollar amount remitted to the state; total mutuel handle and taxes paid to state, city, and county; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of the triples.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

- a.* A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and gambler's treatment; and admission fees.
- b.* A report on whether material weaknesses in internal accounting control exist.
- c.* A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) Maintenance of grounds and facilities. Each licensee shall at all times maintain its grounds and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) Facilities for commission. Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) Sanitary facilities for patrons. Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's grounds.

5.4(4) First-aid room. Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during live racing at racetracks and while excursion gaming boats are cruising, either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health. During all other hours of operation, the licensee shall have, at a minimum, one employee trained in CPR, in first aid, and in the use of the automated external defibrillator (AED). Each licensee is required to have an AED at the licensee's facility.

5.4(5) Security force.

a. Peace officer. Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator.

b. Employ adequate security. Each licensee shall employ sufficient security to remove a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice from the licensed premises. Security shall also be provided in and about the grounds to secure restricted areas such as the barn area, kennel area, paddock, and testing area.

c. Incident reports. The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. Ejection or exclusion. A licensee may eject or exclude any person, licensed or unlicensed, from the grounds or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) Firearms possession within casino.

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that casino.

b. Each casino licensee shall post in a conspicuous location at each entrance to the casino a sign that may be easily read stating, "Possession of any firearm within the casino without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) Videotaping. Licensees are required to conduct continuous surveillance with the capability of videotaping all gambling activities under Iowa administrative rules 661—Chapter 23, promulgated by the department of public safety.

5.4(8) Commission approval of contracts and business arrangements.

a. *Qualifying agreements.* All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value exceeds \$100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

(1) Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

(2) Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

(3) A previously approved qualifying agreement, if consideration exceeds the approved amount by the greater of \$100,000 or 25 percent.

A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or non-compliance with 5.4(8) "b"(4).

b. *Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) Consideration is given to the use of Iowa resources, goods and services. Resources, goods, and services shall be considered to be from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.

2. Goods are distributed through a distributor located in Iowa.

3. Goods are sold by a retailer/wholesaler located in Iowa.

4. Resources are produced or processed in Iowa.

5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code section 99F.7(4) if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

c. *Related parties.* Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

(1) Any corporate officer or member of a facility's board of directors.

(2) Any owner with more than a 5 percent interest in a facility.

(3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

d. Review criteria. The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) Checks. The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) Taxes and admission fees.

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Admission fees.

(1) Excursion gambling boat. Admission fees, whose collection by the state is authorized under Iowa Code section 99F.10(2), shall be set for the following fiscal year by the commission on or before the June meeting of the commission. The total amount payable to the commission shall be determined on a per-boat basis with each responsible licensee paying a proportionate amount of the total amount consistent with Iowa Code section 99F.10(4).

(2) Racetrack enclosure. Admission fees as required by Iowa Code section 99D.14(2) shall be collected in lieu of any fees imposed by Iowa Code section 99F.10.

(3) Fee free passes. A fee free pass may be issued at the discretion of the facility for persons actually working in the facility. The facility must maintain a fee free pass logbook, available for inspection by commission or DCI representatives. The logbook must reflect the following information: date the fee free pass is being used; user's name and date of birth (verified by photo ID); company or purpose that the fee free pass is being used for; issuer; pass number; time out; and time in. Fee free passes shall only be issued on a daily basis and must be returned before the individual who is using the fee free pass leaves the facility grounds. Fee free passes are subject to the license requirements of 491—subrule 6.2(6). A fee free pass may be used by an employee who has forgotten the employee's license but may not be used to avoid obtaining a duplicate license. An occupational license issued by the commission may be used in lieu of a fee free pass. A holder of a fee free pass will not be counted toward admission for tax purposes.

c. Submission of taxes and admission fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis on a form provided by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by 3 p.m. on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of admission fees paid. These reports shall be by calendar month and filed by close of the third business day following the end of the month.

d. Admission tracking requirement. All entrances used for admission of patrons must have a counting device of a type approved by the commission.

5.4(11) Rate of tax revenue. Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

5.4(12) Gambling treatment program.

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

5.4(13) *Records regarding ownership.*

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

- (1) If a corporation:
 1. A certified copy of articles of incorporation and any amendments thereto.
 2. A copy of bylaws and amendments thereto.
 3. A current list of officers and directors.
 4. Minutes of all meetings of stockholders and directors.
 5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
 6. A complete record of all transfers of stock.
 7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
 8. A record, by stockholder, of all dividends distributed by the corporation.
 9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

- (2) If a partnership:
 1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.
 2. A record of the withdrawals of partnership funds or assets.
 3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.
 4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

- (3) If a sole proprietorship:
 1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.
 2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.
 3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) Retention, storage, and destruction of books, records, and documents.

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

- (1) Prepared and maintained in a complete and accurate form.
- (2) Retained at a site approved by the administrator until audited.
- (3) Held immediately available for inspection by the commission during business hours of operations.
- (4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) Remodeling. For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

5.4(16) Officers, agents, and employees. Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate.

491—5.5(99D) Pari-mutuel uniform requirements.

5.5(1) Insect and rodent control. The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

5.5(2) Results boards, totalizers required. Each licensee shall provide and maintain computerized totalizers and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) Photo finish camera. A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) Electric timing device. Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) Official scale. The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) Lighting. Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) Fencing. The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) Guest passes. The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

5.5(9) Stewards. There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

5.5(10) Purse information. Each licensee shall provide to the commission at the close of each racing meet the following purse information:

- a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.
- b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) Boat design.

- a. The minimum passenger capacity necessary for an excursion gambling boat is 250.
- b. Boats must be self-propelled. A boat may contain more than one "vessel" as defined by the U.S. Coast Guard. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

5.6(2) Excursions.

- a. *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of two hours in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours pursuant to Iowa Code section 99F.4(17).

b. Dockside completion of excursions. If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. Notification. If an excursion is not completed due to reasons specified in paragraph 5.6(2)“b,” a commission representative shall be notified as soon as is practical.

5.6(3) Drug testing of boat operators. Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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♦ Two ARCs

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